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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/662,009

Filing Date: September 11, 2003

Appellant(s): KNOX ET AL.

Scott D. Paul
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/23/2007 appealing from the Office action

mailed 08/23/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,996,585 B2	LAI	9-2002
2002/0129042 A1	BRADSHAW	4-2002
5,479,654	SQUIBB	12-1995
2001/0056504 A1	KUZNETSOV	12-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 1, 3, 6, 8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lai et al. (Lai hereinafter) (US Patent No. 6,996,585 B2, filed: September 24, 2002) view of Bradshaw et al. (Bradshaw hereinafter) (US Patent App. Pub. No. 2002/0129042 A1, filed: April 24, 2002).

Regarding Claim 1, Lai discloses a method of identifying an update between a first version of a data file and a second version of a data file, the data file having a plurality of blocks of data (Col. 1, lines 64 – 66, Lai), the meaning of the data file being insensitive to the ordering of the blocks of data within the data file (Col. 2, lines 60 – 65, Lai¹), the method comprising the steps of:

providing each of said plurality of blocks of data with a first checksum (Col. 1 and 2, lines 64 – 66 and 1 – 5; respectively, "...the method to calculate the checksum of a file is to divide the content of the file into plurality of regions. Thereafter, the corresponding contents in these regions are calculated with XOR (exclusive or) operation, thus obtaining a sample region. Then the sample contents with a predetermined offset in the sample region are summed into several sub-checksum values ..."; Lai);

¹ Wherein the updated file corresponds to the new version of the file, the checksum of this new file corresponds to the first checksum, and the checksum of the file when is updated again corresponds to the second checksum (as disclosed in claimed). Regarding the ordering of the blocks claimed, examiner interprets that since Lai's disclosure stores data records of the file, such as, filename and path; data can be located even though it is not in a specified order in the directory (Col. 3, lines 45 – 47, Lai). This makes Lai's procedure insensitive to the ordering of the files.

providing each of said versions of the data file with a second checksum of the said version of the data file as a whole, said second checksum being insensitive to the ordering of the blocks of data within the data file (Col. 2, lines 60 – 65, Lai²);

However, Lai is silent with respect to comparing checksums of the versions of the data files. On the other hand, Bradshaw discloses a system and method including:

comparing the second checksum of the first version of the data file with the second checksum of the second version of the data file (Page 10, [0081], lines 3 – 5, Bradshaw³);

responsive to said comparison indicating that the second checksum of the first version of the data file differs from the second checksum of the second version of the data file (Page 10, [0081], line 5, Bradshaw⁴):

comparing the first checksum of each of said plurality of blocks of data of the first version of the data file with the first checksum of each of said plurality of blocks of data of the second version of the data file (Page 10, [0081], lines 15 – 18, Bradshaw⁵); and

² Wherein the updated file corresponds to the new version of the file, the checksum of this new file corresponds to the first checksum, and the checksum of the file when is updated again corresponds to the second checksum (as disclosed in claimed). Regarding the ordering of the blocks claimed, examiner interprets that since Lai's disclosure stores data records of the file, such as, filename and path; data can be located even though it is not in a specified order in the directory (Col. 3, lines 45 – 47, Lai). This makes Lai's procedure insensitive to the ordering of the files. Lai provides details regarding the ordering of the blocks of the data within the data file (Fig. 4, Col. 3, lines 23 – 34, Lai). Wherein Fig. 4 clearly shows different blocks of data, such as, "410, 420, ...430", "415, 425, ..., and 435", and further "block 601, 602, ..., and 603". It is clear that for example "410, 420, ...430" does not follow the same ordering as "601, 602, ..., and 603". This feature of Lai's disclosure show how the second checksum is not based on the ordering of the blocks of data within the data file; thus being insensitive to the ordering as claimed.

³ Wherein the checksum disclosed on this citation corresponds to second checksum claimed.

⁴ Wherein the information queried corresponds to the responsive of the comparison.

⁵ Wherein the new checksum corresponds to first checksum claimed.

providing an indication of which of said plurality of blocks of data differ between the first version of the data file and the second version of the data file (Page 10, [0084], lines 1 – 6, Bradshaw⁶). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Bradshaw's teachings, with respect to comparing the checksums, to Lai's system. Skilled artisan would have been motivated to do so, as suggested by Bradshaw (Page 10, [0081], Bradshaw), for the purpose of checking elements for accuracy. Additionally, skilled artisan would have been motivated to do so also because a checksum is a calculated value that is used to detect errors.

Regarding Claim 3 and 8, the combination of Lai in view of Bradshaw discloses apparatus wherein at least one of the blocks of data consists of a plurality of components and each of said plurality of components further comprises a third checksum (Col. 3, lines 29 – 32, Lai).

Regarding Claim 6, the combination of Lai in view of Bradshaw discloses an apparatus for identifying an update between a first version of a data file and a second version of a data file, the data file having a plurality of blocks of data (Col. 1, lines 64 – 66, Lai), the meaning of the data file being insensitive to the ordering of the blocks of data within the data file (Col. 2, lines 60 – 65, Lai⁷), the apparatus comprising:

⁶ Wherein each blob corresponds to a block of data (Page 10, [0082], lines 2 – 4, portion of data may be referred as a "data blob", Bradshaw). Examiner interprets the step of looking for signatures of the blobs as a method for providing an indication of which blocks of data are different. In addition, Bradshaw discloses providing this indication (Page 10, [0088], lines 11 – 13, Bradshaw).

⁷ Wherein the updated file corresponds to the new version of the file, the checksum of this new file corresponds to the first checksum, and the checksum of the file when is updated again corresponds to

first checksum generating means for generating a first checksum for each of said plurality of blocks of data(Col. 1, lines 64 – 66, Lai);

second checksum generating means for generating a second checksum for each of said first and said second versions of the data file as a whole, said second checksum being insensitive to the ordering of the blocks of data within the data file (Col. 2, lines 60 – 65, Lai⁸);

first comparison means for comparing the second checksum of the first version of the data file with the second checksum of the second version of the data file (Page 10, [0081], lines 3 – 5, Bradshaw⁹);

second comparison means for comparing the first checksum of each of said plurality of blocks of data of the first version of the data file with the first checksum of each of said plurality of blocks of data of the second version of the data file, the second

the second checksum (as disclosed in claimed). Regarding the ordering of the blocks claimed, examiner interprets that since Lai's disclosure stores data records of the file, such as, filename and path; data can be located even though it is not in a specified order in the directory (Col. 3, lines 45 – 47, Lai). This makes Lai's procedure insensitive to the ordering of the files. Furthermore, Lai provides details regarding the ordering of the blocks of the data within the data file (Fig. 4, Col. 3, lines 23 – 34, Lai). Wherein Fig. 4 clearly shows different blocks of data, such as, "410, 420, ...430", "415, 425, ..., and 435", and further "block 601, 602,..., and 603". It is clear that for example "410, 420, ...430" does not follow the same ordering as "601, 602, ..., and 603". This feature of Lai's disclosure show how the second checksum is not based on the ordering of the blocks of data within the data file; thus being insensitive to the ordering as claimed.

⁸ Wherein the updated file corresponds to the new version of the file, the checksum of this new file corresponds to the first checksum, and the checksum of the file when is updated again corresponds to the second checksum (as disclosed in claimed). Regarding the ordering of the blocks claimed, examiner interprets that since Lai's disclosure stores data records of the file, such as, filename and path; data can be located even though it is not in a specified order in the directory (Col. 3, lines 45 – 47, Lai). This makes Lai's procedure insensitive to the ordering of the files. Furthermore, Lai provides details regarding the ordering of the blocks of the data within the data file (Fig. 4, Col. 3, lines 23 – 34, Lai). Wherein Fig. 4 clearly shows different blocks of data, such as, "410, 420, ...430", "415, 425, ..., and 435", and further "block 601, 602,..., and 603". It is clear that for example "410, 420, ...430" does not follow the same ordering as "601, 602, ..., and 603". This feature of Lai's disclosure show how the second checksum is not based on the ordering of the blocks of data within the data file; thus being insensitive to the ordering as claimed.

⁹ Wherein the checksum disclosed on this citation corresponds to second checksum claimed.

comparison means being responsive to said first comparison means indicating that the second checksum of the first version of the data file differs from the second checksum of the second version of the data file (Page 10, [0081], lines 15 – 18, Bradshaw¹⁰):

indication means providing an indication of which of said plurality of blocks of data differ between the first version of the data file and the second version of the data file (Page 10, [0084], lines 1 – 6, Bradshaw¹¹).

Regarding Claim 11, the combination of Lai in view of Bradshaw discloses a computer program comprising computer program code means adapted to perform the steps of claim 1 (Fig. 1, item 102, Page 4, [0039], lines 5 – 11, Bradshaw).

Claim 2, 4, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lai et al. (Lai hereinafter) (US Patent No. 6,996,585 B2, filed: September 24, 2002) view of Bradshaw et al. (Bradshaw hereinafter) (US Patent App. Pub. No. 2002/0129042 A1, filed: April 24, 2002), and further in view of Squibb (Squibb hereinafter) (US Patent No. 5,479,654, patented: December 26, 1995).

Regarding Claim 2 and 7, the combination of Lai in view of Bradshaw discloses all the limitation as disclosed above, including checksums and blocks of data. However, the combination of Lai in view of Bradshaw is silent with respect to being sensitive to the

¹⁰ Wherein the new checksum corresponds to first checksum claimed.

¹¹ Wherein each blob corresponds to a block of data (Page 10, [0082], lines 2 – 4, portion of data may be referred as a “data blob”, Bradshaw). Examiner interprets the step of looking for signatures of the blobs

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ordering of the data. On the other hand, Squibb discloses a system and method including checksums that are sensitive to the ordering of the data within a block of data (Col. 6 and 7 – 8, lines 28 – 34, 66 – 67, and 1 – 6; respectively, Squibb). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Squibb's teaching to the combination of Lai in view of Bradshaw' system. Skilled artisan would have been motivated to do so, as suggested by Squibb (Col. 3, lines 25 – 30, Squibb), to detect character order differentiating, and to catch most of transportations. In addition, this suggestion of combination is strongly made because both systems teach procedures in the same field of databases, such as, versioning, updating changes, checksums, XOR, and CRC algorithms.

Regarding Claim 4 and 9, the combination of Lai in view of Bradshaw and further in view of Squibb discloses an apparatus further comprising the steps of:

selecting said third checksum from one of MD5 or a CRC algorithm (Col. 3, lines 29 – 32, Lai; and Col. 6, lines 29 – 34, Squibb); and

combining said third checksum to provide said first checksum for each of the blocks of data using one of a 1-s complement sum or an XOR algorithm (Fig. 3, item S31, Col. 2, lines 1 – 2, Lai; and Col. 6, lines 28 – 29 and 33 – 35, Squibb).

Claim 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lai et al. (Lai hereinafter) (US Patent No. 6,996,585 B2, filed: September 24, 2002) view

as a method for providing an indication of which blocks of data are different. In addition, Bradshaw

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of Bradshaw et al. (Bradshaw hereinafter) (US Patent App. Pub. No. 2002/0129042 A1, filed: April 24, 2002), and further in view of Kuznetsov (Kuznetsov hereinafter) (US Patent App. Pub. No. 2001/0056504 A1, published: December 27, 2001).

Regarding Claim 5 and 10, the combination of Lai in view of Bradshaw discloses all the limitations as disclosed above, including XML data files (Page 11, [0092], lines 11 – 13, Bradshaw). However, the combination of Lai in view of Bradshaw is silent with respect to an XSL Transform. On the other hand, Kuznetsov discloses XSL Transform (Page 8, [0091], lines 1 – 3, Kuznetsov). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the Kuznetsov's teachings to the combination of Lai in view of Bradshaw. Skilled artisan would have been motivated to do so, as suggested by Kuznetsov (Page 3, [0019], lines 4 – 5, Kuznetsov), to provide a flexible transformation mechanism that facilitates generation of translation code on the fly.

(10) Response to Argument

1. Claims 1 – 10 were rejected under the second paragraph of 35 U.S.C. § 112.

Applicant's arguments have been fully considered and are persuasive. The rejection under the second paragraph of 35 U.S.C. § 112 of claims 1- 10 has been withdrawn.

2. Claims 1, 3, 6, 8, and 11 were rejected under 35 U.S.C. § 103 for obviousness based upon Lai et al. Patent No. 6,996,585 (hereinafter Lai) in view of Bradshaw et al., U.S. Patent publication No. 2002/0129042 (hereinafter Bradshaw).

Appellant argues that; "Appellants are unable to discover any teachings that support a finding that the claimed 'the meaning of the data file being insensitive to the ordering of the blocks of data with the data field' and 'the second checksum being insensitive to the ordering of the blocks of data with the data field'", and specifically points out that; "Lai is silent as to whether or not these checksum values would be the same if a different order of the individual blocks were used".

Examiner respectfully disagrees. First, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies ("the data field") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Also, in response to appellant's arguments, the recitation "the meaning of the data file being insensitive to the ordering of the blocks of data with the data file" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the

claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Secondly, as stated in the Final Office Action dated 08/18/2006, the combination of Lai in view of Bradshaw does disclose: the second checksum being insensitive to the ordering of the blocks of data with the data file (Col. 2, lines 60 – 65; "...If the file is updated as a new file, the checksum of the new file is calculated, and the checksum, the filename, and the size of the new file are stored into the data directory. The checksum and data record of the file is calculated again if the file is updated...", Lai). As previously stated by the Examiner in the Final Office Action, the updated file corresponds to the new version of the file, the checksum of this new file corresponds to the first checksum, and the checksum of the file when is updated again corresponds to the second checksum (as claimed). Regarding the ordering of the blocks claimed, examiner interprets that since Lai's disclosure stores data records of the file, such as, filename and path; data can be located even though it is not in a specified order in the directory (Col. 3, lines 45 – 47, Lai). This makes Lai's procedure insensitive to the ordering of the files. Lai provides details regarding the ordering of the blocks of the data within the data file (Fig. 4, showing XOR operation, Col. 3, lines 23 – 34, Lai). Wherein Fig. 4 clearly shows different blocks of data, such as, "410, 420, ...430", "415, 425, ..., and 435", and further "block 601, 602,..., and 603". It is clear that for example "410, 420, ...430" does not follow the same ordering as "601, 602, ..., and 603". This feature

of Lai's disclosure show how the second checksum is not based on the ordering of the blocks of data within the data file; thus being insensitive to the ordering as claimed. Additionally, and to further clarify, the Examiner points out to the specification of the disclosure filed by Appellant. For example, paragraph of [0026] of publication of the Specification of the disclosure recites: "...The component level checksums may optionally not be saved as part of the XML data, but may instead be combined using an algorithm that is not sensitive to the order of the data items, such as 1-s complement or XOR algorithm...". Thus, it is clear that the claimed invention utilizes the XOR algorithm to make such checksum insensitive to the ordering of the blocks of data with the data file. The combination of Lai in view of Bradshaw explicitly teaches the XOR algorithm on the second checksum (See – Fig. 4, as cited above, Col. 3, lines 9 – 16, "...the corresponding contents in these regions are calculated with XOR (exclusive or) operation, thus obtaining a sample region", and also lines 23 – 28, "...First the content of the file is divided into several regions 410, 420, ..., 430. The corresponding contents in these regions are calculated by XOR, thus a sample region 500 is obtained. For example, the contents 415, 425, ..., and 435 are calculated by XOR.", Lai). According to Hargrave's Communications Dictionary, Wiley from Wiley (Copyright 2001 by the Institute of Electrical and Electronics Engineers, Inc) exclusive OR (XOR) Truth Table shows inputs A, and B; which when input A=0 and B=1, output =1; and when input A=1 and B=0, output =1; which shows that the output does not change with the order of the input, being insensitive to the ordering.

Therefore, the applied art does teach such limitation as claimed by the claimed invention.

Appellant argues that; "it is readily apparent that the first and second checksums identified by the Examiner in Bradshaw do not correspond to the claimed first and second checksum"; by stating that the "new checksum disclosed by Bradshaw does not correspond to the claimed first checksum (i.e. of the plurality of blocks of data is provided with a first checksum)", and that such checksum is "the same checksum that the Examiner identified as the second checksum".

Examiner respectfully disagrees. First, in response to applicant's arguments against the references individually (Bradshaw in this case), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Second, as stated in the Office Action above (rejection of claim 1), the combination of Lai in view of Bradshaw does disclose: "providing each of said plurality of blocks of data with a first checksum"; and second checksum (Col. 1, lines 64 – 66 and 1 – 5; respectively; "...the method to calculate the checksum of a file is to divide the content of the file into plurality of regions. Thereafter, the corresponding contents in these regions are calculated with XOR (exclusive or) operation, thus obtaining a sample region. Then the sample contents with a predetermined offset in the sample region are summed into several sub-checksum values ...", also Col. 2, lines 60 – 65; "...If the file is

updated as a new file, the checksum of the new file is calculated, and the checksum, the filename, and the size of the new file are stored into the data directory. The checksum and data record of the file is calculated again if the file is updated..."; Wherein the updated file corresponds to the new version of the file, the checksum of this new file corresponds to the first checksum, and the checksum of the file when is updated again corresponds to the second checksum as claimed; Lai). Also as discussed in this Office Action above, the Bradshaw reference was used in the combination for the purpose of teaching: comparing checksums of the versions of the data file.

Appellant questions Examiner's reasons for combination of the teachings of Lai and Bradshaw.

Examiner is not persuaded. The reason for combination is clearly stated in above Office Action. For the reader's convenience, it is repeated below:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Bradshaw's teachings, with respect to comparing the checksums, to Lai's system. Skilled artisan would have been motivated to do so, as suggested by Bradshaw (Page 10, [0081], Bradshaw), for the purpose of checking elements for accuracy. Additionally, skilled artisan would have been motivated to do so also because a checksum is a calculated value that is used to detect errors.

3. Claims 2, 4, 7, and 9 were rejected under 35 U.S.C. § 103 for obviousness based upon Lai in view of Bradshaw and further in view of Squibb, U. S. Patent No. 5,479,654.

Appellant questions Examiner's reasons for combination of the teachings of Lai, Bradshaw, and Squibb.

Examiner is not persuaded. The reason for combination is clearly stated in above Office Action. For the reader's convenience, it is repeated below:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Squibb's teaching to the combination of Lai in view of Bradshaw' system. Skilled artisan would have been motivated to do so, as suggested by Squibb (Col. 3, lines 25 – 30, Squibb), to detect character order differentiating, and to catch most of transportations. In addition, this suggestion of combination is strongly made because both systems teach procedures in the same field of databases, such as, versioning, updating changes, checksums, XOR, and CRC algorithms.

4. Claims 5 and 10 were rejected under 35 U.S.C. § 103 for obviousness based upon Lai in view of Bradshaw and further in view of Kuznetsov, U. S. Patent Publication No. 2001/0056504.

Appellant questions Examiner's reasons for combination of the teachings of Lai, Bradshaw, and Kuznetsov.

Examiner is not persuaded. The reason for combination is clearly stated in above Office Action. For the reader's convenience, it is repeated below:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the Kuznetsov's teachings to the combination of Lai in view of Bradshaw. Skilled artisan would have been motivated to do so, as suggested by Kuznetsov (Page 3, [0019], lines 4 – 5, Kuznetsov), to provide a flexible transformation mechanism that facilitates generation of translation code on the fly.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Giovanna B. Colan
Art Unit 2162

Conferees:


^{SIR}
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Supervisory Patent Examiner
Art Unit 2161

Eddie C. Lee
TQAS/Appeals Specialist
TC 2100


EDDIE C. LEE
SUPERVISORY PATENT EXAMINER

An appeal conference was held on 26 June 2007, and it was agreed to proceed to the board of appeals.